

Message Text

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ACTION ARA-20

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INFO PANCANAL

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C O N F I D E N T I A L PANAMA 4757

EO 11652: GDS

TAGS: ETRD, PN

SUBJ: BANANA TAX

REF: STATE 177023 PANAMA 4326 (PARA 4)

1. POINT MADE BY PLANNING AND ECONOMIC POLICY MINISTER NICOLAS ARDITO BARLETTA DURING CIAP REVIEW WITH RESPECT TO ESCROW TAX PAYMENT ACCOUNT SEEMS NOT REPEAT NOT TO BE WELL TAKE,. PER REFTEL, BARLETTA SAYS UB WAS IN ERROR TO MAKE TAX PAYMENT IN SUCH FORM "WHILE SUIT AGAINST GOP WAS IN COURTS." THERE HAS NOT BEEN A SUIT AGAINST GOP IN COURTS BUT UB HAS INFORMED EMBASSY UB WILL FILE SUIT.

2. ACCORDING TO UB LEGAL COUNSEL, PROCEDURE FOR MAKING TAX PAYMENTS BY USING CERTIFICATE OF GUARANTEE (CG) IS PERMITTED UNDER PANAMANIAN LAW. (IT MAY BE THAT SUCH PROCEDURE NOT REPEAT NOT PERMITTED FOR MAKING TAX PAYMENTS -- THIS CERTAINLY IS CONTENTION OF FINANCE MINISTER AND COMMERCE/INDUSTRIES MINISTER.)

3. UB OFFICIALS, ACTING ON ADVICE OF PANAMANIAN COUNSEL, UNDERSTAND CG PROCEDURE TO BE FOLLOWING:

(1) PURCHASE OF CERTIFICATE OF GUARANTEE -- FUNDS PLACED IN ESCROW.

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(2) A PROTEST (ESCRITURA) ATTACHED TO CG AT TIME OF PAYING TAX AT FINANCE MINISTRY.

(3) ON PAYMENT OF TAXES BY CG, WITH PROTEST (DEMAND) ATTACHED), FINANCE MINISTRY HAS 60 DAYS IN WHICH TO RESPOND. (NO RESPONSE CONSIDERED AS "NEGATIVE" TO DEMAND OR PROTEST.)

(4) FOLLOWING 60 DAY PERIOD FOR FINANCE MINISTRY IN WHICH TO REPLY, PLAINTIFF THEN HAS 60 DAYS IN WHICH TO APPEAL NEGATIVE DECISION TO SUPREME COURT.

4. COMMENT: WAITING PERIOD FOR FIRST TAX PAYMENTS MADE BY CG UNDER PROTEST EXPIRED DURING FIRST WEEK IN AUGUST. UB JOHN TAYLOR ON AUGUST 6 REMINDED VICTOR HEYL THAT UB ATTORNEYS SHOULD PROCEED TO FILE SUIT. ECOMOFF ADVISED THAT THEY SHOULD DO SO IN ORDER TO BE ON RECORD OF HAVING EXHAUSTED "DUE RECOURSE UNDER PANAMANIAN LAW" IN EVENT DISCUSSIONS SHOULD BREAK DOWN AND GOP EXPROPRIATE PROPERTIES. POINT RE COMMENT BY BARLETTA IS THAT CONSTITUTION OF ESCROW ACCOUNT AND LAW SUIT, AT BEST, RUN CONCURRENTLY -- UB DID NOT REPEAT NOT VIOLATE PANAMANIAN LAW BY MAKING ESCROW ARRANGEMENT WHILE SUIT WAS IN COURTS. BARLETTA, BY HIS OWN ADMISSION TO AMBASSADOR, NOT WELL INFORMED ABOUT BANANA PROBLEM.
JORDEN

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